No. 17-1011

IN THE

Supreme Court of the United States

BUDHA ISMAIL JAM, et al.,

Petitioners,

v.

INTERNATIONAL FINANCE CORPORATION,

Respondent.

On Writ of Certiorari
to the United States Court of Appeals
for the District of Columbia Circuit

BRIEF OF *AMICI CURIAE* PROFESSORS OF INTERNATIONAL ORGANIZATION AND INTERNATIONAL LAW IN SUPPORT OF PETITIONERS

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INTEREST OF AMICI CURIAE[1]

Amici are professors with expertise in international organizations and international law, including the application of international law by U.S. courts. (A List of *Amici* is in Appendix A.) *Amici* have a range of experience with the U.S. and international law applicable to international organizations. They include former officials of the U.S. Department of State who have represented the United States in international organizations and have participated in the development of international and U.S. law relevant to the immunities of such organizations. *Amici* seek to present their views on the interaction between the International Organizations Immunities Act of 1945 (IOIA) and other bodies of law, including the international and domestic understandings of foreign sovereign immunity and international organizational immunity as of 1945 when the IOIA was adopted; as of 1952 when the United States Executive Branch embraced a restrictive view of sovereign immunity on policy grounds; and as of 1976 when the restrictive doctrine was codified into U.S. statutory law.

Amici limit their submission to issues of the immunities of international organizations in U.S. law in general. They do not take a position on the claims

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[1] In accordance with Supreme Court Rule 37.3(a), all parties consented to the filing of this brief. Petitioners and Respondent provided blanket consent for all *amicus* briefs on June 27 and July 2, 2018, respectively. As required by Supreme Court Rule 37.6, no counsel for a party authored this brief in whole or in part, and no person other than *amici* and their counsel made any monetary contribution intended to fund this brief.

advanced in the pending case, and in particular they express no opinion on whether these claims qualify for denial of immunity under a restrictive theory, which would be a question for the lower courts to decide on remand. *Amici* are united in the view that the IOIA anticipates changes in the applicable doctrines of immunity, and that the changes to restrict foreign sovereign immunities as announced by the Executive in 1952 and codified by the Congress in 1976 are applicable *mutatis mutandis* to the immunities of international organizations.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

The IOIA does not give international organizations (IOs) absolute immunity from suit. Rather, in light of the IOIA's text and context, IOs enjoy the same immunities as those available to foreign states at the time of suit, unless an international agreement requires otherwise.

I. The IOIA provides that IOs enjoy "the same immunity" from suit "as is enjoyed by foreign governments." 22 U.S.C. § 288a(b). With this language, the IOIA placed IOs on the same footing as foreign governments for purposes of immunity from suit. It did not freeze the law of IO immunity in 1945, but rather granted IOs whatever immunity is due foreign governments at the time the immunity is claimed.

That Congress intended to allow the law of IO and foreign sovereign immunity to evolve is evident from the text of the IOIA and the context in which it was enacted. To begin, because there was no developed law of IO immunity in the United States, the IOIA borrowed an

analogy from foreign sovereign immunity law; that body of law was rapidly evolving and Congress expected it would continue to do so. The negotiating history of key international agreements being developed around 1945 was a consequential backdrop for Congress's own debate and further suggests that Congress intended the law of IO immunity to continue to evolve, as many of these agreements adopted a functional rather than absolute approach to IO immunity. During this same time period, the Executive and Judicial Branches were moving away from absolute immunity for foreign sovereigns, too. Against this backdrop, it is implausible that Congress meant for IOs to benefit from different immunity than foreign states enjoy or than international agreements require.

II. The 1976 Foreign Sovereign Immunities Act (FSIA) provided a new and more comprehensive set of default rules for foreign sovereign immunity—and thus for the IOs, whose immunity is "the same" as the immunity of foreign governments. 22 U.S.C. § 288a(b). The FSIA codifies the restrictive theory of immunity that the Executive had already embraced decades earlier, with enumerated exceptions for categories of suits for which Congress determined that immunity should not apply. In the absence of other rules prescribed by international agreements, it is the 1976 criteria—not an outmoded theory of absolute immunity—that govern IO immunity today.

Applying the restrictive principles embodied in the FSIA to IOs is consistent with the text of the IOIA and has been the considered Executive position on how the two statutes interact. It also produces a coherent,

workable approach to IO immunity that accounts for the growing participation of IOs in commercial activities. A contrary approach allowing IOs to enjoy absolute immunity would make little sense: It would insulate IOs engaging in commercial activity in the United States or whose commercial activities have direct effects in the United States from liability in U.S. courts, when foreign governments enjoy no such immunity. Because the FSIA explicitly preserves all existing international agreements, applying the FSIA criteria in cases against IOs is fully consistent with the international obligations of the United States.

ARGUMENT

I. THE IOIA OF 1945, ADOPTED AT A TIME OF FLUX IN IMMUNITIES PRACTICE, INSTRUCTS COURTS TO DRAW ON FOREIGN SOVEREIGN IMMUNITY PRINCIPLES IN EFFECT AT THE TIME OF SUIT.

The International Organizations Immunities Act of 1945, 22 U.S.C. § 288a(b) (IOIA), provides that designated international organizations (IOs), their property, and their assets "*shall enjoy the same immunity from suit* and every form of judicial process *as is enjoyed by foreign governments.*"[2] The circuits are

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[2] The IOIA specifies:

§ 288a. Privileges, exemptions, and immunities of international organizations ....

(b) International organizations, their property and their assets, wherever located, and by whomsoever held, *shall enjoy the same*

divided on whether the IOIA froze a rule of absolute immunity for IOs as of 1945 by adopting what some courts have assumed to be the then-applicable rule for foreign governmental immunity regardless of subsequent changes, or whether "same immunity" under the IOIA places IOs on the same footing as foreign governments at the time that immunity is claimed.

Amici submit that Congress could not possibly have meant to insist on rigid application of an approach to immunity that was already obsolescing in 1945 and would very soon be definitively rejected for cases against foreign governments. To insist on allowing IOs to benefit today, in the absence of obligations arising from international agreements, from an approach to immunity that was already rapidly disappearing when the IOIA was enacted is anachronistic.

As *Amici* will demonstrate, principles of IO immunity and foreign governmental immunity were undergoing rapid development in 1945, as regards both international and domestic law and practice. Congress did not expect the law to remain static in this area, nor was it in a position to prescribe policy guidance for IO immunities at a time when there had been virtually no experience to draw on. Rather than enshrining a fixed rule for all time, Congress merely specified a default rule by borrowing the closest (albeit imperfect) analogy at

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immunity from suit and every form of judicial process *as is enjoyed by foreign governments*, except to the extent that such organizations may expressly waive their immunity for the purpose of any proceedings or by the terms of any contract.
22 U.S.C. § 288a (emphasis added).

hand—the treatment of foreign governments—in the expectation that relevant law, including international agreement-based rules, would be quickly developing. Congress made no independent policy judgment that IOs ought to enjoy a given level of immunity as a matter of law for the indefinite future, and in particular would not have intended IOs to benefit from a different level of immunity than foreign governments enjoy, long after the rationale for according absolute immunity to foreign sovereigns had been discredited and abandoned. Under a proper reading of the IOIA, unless an international agreement requires otherwise, IOs should not enjoy different immunities than those available to foreign states at the time of suit.

A. In 1945, Immunity Rules for IOs Were Unsettled, and Congress Envisioned That They Would Continue to Change.

On the IOIA's enactment date, December 29, 1945, international law governing IO activities was in an embryonic stage, and U.S. practice with respect to IOs was virtually non-existent. As a non-member of the League of Nations, the main international organization of the interwar period, the United States had no occasion to confer immunity on the League, nor did the United States take any relevant position on the immunity of the handful of organizations in which the United States had participated before 1945.[3] Neither international custom

[3] The U.S. position was that customary international law did not require extending to IOs the privileges and immunities of foreign governments. Lawrence Preuss, *The International Organizations Immunities Act*, 40 Am. J. Int'l L. 332, 333 (1946); 4 Green H.

nor treaties had moved very far toward elaborating a body of immunity principles for IOs until after the creation of the United Nations, its specialized agencies, and numerous regional and technical bodies. International law scholars writing just before and just after 1945 underscored the paucity of precedents for IO immunity and the need for a whole body of new law to be created essentially from scratch.[4] First principles of an international law for IOs would only begin to be hammered out later in the 1940s, with such basic questions as the nature of the international personality of the new generation of IOs and their capacities and powers still to be determined.[5]

Hackworth, *Digest of International Law* 419-23 (1942). Nor was there relevant U.S. practice relating to immunity of the International Labor Organization or the only regional organization with an office on U.S. territory, namely the Pan American Sanitary Bureau.

[4] E.g., Preuss, *supra* n.3; Philip C. Jessup, Editorial Comments, *Status of International Organizations: Privileges and Immunities of Their Officials*, 38 Am. J. Int'l L. 658 (1944) (proliferation of IOs will raise the problem of their immunities afresh); Josef L. Kunz, *Privileges and Immunities of International Organizations*, 41 Am. J. Int'l L. 828, 846-47 (1947) ("The problem of privileges and immunities of the international organizations themselves is obviously a new problem.... The building-up of a new and complete international law concerning this topic will have to take into consideration the following problems [suggesting seven areas].").

[5] Cf. *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, 1949 I.C.J. 174 (Apr. 11) (addressing capacity of United Nations to bring an international claim on behalf of its agent). On the uncertain state of IO immunity law as of 1945 and its rapid development within just a few years, *see* C. Wilfred

U.S. leadership at the Bretton Woods conference in July 1944, the Chicago conference on civil aviation in December 1944, and the San Francisco conference to negotiate the Charter of the United Nations in June 1945 foreshadowed a pragmatic, functionally-based approach to IO immunities. *See infra* Part I.B. To ensure a domestic legal framework for putting into effect the immunities of the organizations that the United States was contemporaneously expecting to join, the Department of State prepared a draft of what would become the IOIA and worked with Congress to have a barebones IO immunities statute in place by the end of 1945.[6]

As reflected in the language and legislative history of the IOIA, Congress was well aware of the novelty of creating such a statute and did not intend to freeze the development of IO immunity by virtue of the decision to borrow the closest analogy at hand.[7] The House Report for the bill that led to the IOIA observed that, in 1945, there existed "no law of the United States whereby this country can extend privileges of a governmental

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Jenks, *The Headquarters of International Institutions: A Study of Their Location and Status* (Royal Inst. of Int'l Affs., 1945); C. Wilfred Jenks, *International Immunities* (1961); Kuljit Ahluwalia, *The Legal Status, Privileges and Immunities of the Specialized Agencies of the United Nations and Certain Other International Organizations* (1964).

[6] On the Department's role in drafting the legislation, *see* Sponsorship by the Department of State of Legislation Resulting in the International Organizations Immunities Act of 1945, 1 Foreign Rel. U.S. 1557-67 (1945).

[7] *See* H.R. Rep. No. 79-1203 (1945); S. Rep. No. 79-861 (1945).

character with respect to international organizations or their officials in this country." [8] Thus the bill was presented "to fill th[e] need" for such a law.[9]

B. Around the Time of the IOIA's Passage, the United States Was Negotiating Agreements That Generally Follow a Functional Approach to IO Immunity.

Contemporaneous materials reflect the international context for negotiating and implementing IO immunities: IOs would receive a level of immunity appropriate to their new functions; but unless new international agreements so required, IOs would in no case receive different immunities than those applicable to foreign governments. These materials came to the attention of members of Congress in various ways in 1944-1945, including when some influential members participated in the parallel international negotiations of the 1940s to develop the first generation of IO immunity agreements. Those members of Congress continued to pay attention to specific modalities of functional IO immunity through this first generation.

It is important to understand the main approaches to IO immunity in the period surrounding the enactment of the IOIA and in the first decade thereafter, leading up to the negotiation of the immunities provisions in the 1955 agreement constituting the International Finance Corporation (Respondent here). Details concerning

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[8] H.R. Rep. No. 79-1203 at 2.
[9] *Id.*

immunities clauses between the 1945 UN Charter and the 1955 IFC Articles of Agreement are in Appendix B.

In 1944 and 1945, with the end of World War II in view, U.S. diplomats and lawyers were laying the foundational architecture for a new generation of IOs and new approaches to their privileges and immunities. In negotiating the articles of agreement for the International Monetary Fund and the International Bank for Reconstruction and Development (World Bank) in 1944 at the Bretton Woods conference,[10] the United States took distinctly different approaches to the privileges and immunities of these two new bodies, tailoring them to the bodies' different functions.[11] The

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[10] On the conscious choice that these bodies would enjoy different levels of immunity as reflected in their articles of agreement, *see* Jessup, *supra* n.4, at 659-60. Jessup noted that there was less detailed treatment in the draft constitution for the Food and Agriculture Organization; meanwhile, government departments and legislatures "will, of necessity, continue to grope for a satisfactory solution." *Id.* at 662; *see also* Arthur K. Kuhn, Editorial Comments, *United Nations Monetary Conference and the Immunity of International Agencies*, 38 Am. J. Int'l L. 662 (1944).

[11] The Articles of Agreement of the International Monetary Fund, Dec. 27, 1945, 60 Stat. 1401, 1413, T.I.A.S. No. 1501, 2 U.N.T.S. 39, 74, take an expansive approach in Article IX: "The fund, its property and its assets, wherever located and by whomever held, shall enjoy immunity from every form of judicial process except to the extent that it expressly waives its immunity for the purpose of any proceeding or by the terms of any contract." By contrast, the Articles of Agreement of the International Bank for Reconstruction and Development, Dec. 27, 1945, 60 Stat. 1440, 1457-58, T.I.A.S. No. 1502, 2 U.N.T.S. 134, 180, envision that the Bank could be sued, by providing in Article VII(3): "Actions may be brought against the Bank only in a court of competent jurisdiction in the territories of a

Chicago conference on international civil aviation reached agreement in December 7, 1944 on a convention envisioning a new International Civil Aviation Organization with legal capacity as "necessary for the performance of its functions," but its privileges and immunities were not yet specified.[12] The UN Charter negotiated in San Francisco in June 1945 indicated that the Organization would "enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfillment of its purposes."[13]

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member in which the Bank has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities. No actions shall, however, be brought by members or persons acting for or deriving claims from members. The property and assets of the Bank shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Bank."

[12] Convention on International Civil Aviation, done at Chicago, Dec. 7, 1944, entered into force Apr. 4, 1947, 61 Stat. 1180, 1193, T.I.A.S. No. 1591, 15 U.N.T.S. 295, 328, Art. 47: "The Organization shall enjoy in the territory of each contracting State such legal capacity as may be necessary for the performance of its functions. Full juridical personality shall be granted wherever compatible with the constitution and laws of the State concerned."

[13] Charter of the United Nations and Statute of the International Court of Justice art. 105(1), signed at San Francisco June 26, 1945, entered into force, Oct. 24, 1945, 59 Stat. 1031, 1053, T.S. No. 993. The Secretary of State's Report to the President on the San Francisco Conference stated that the United States would need appropriate legislation to implement Article 105. *See* Charter of the United Nations: Report to the President on the Results of the San Francisco Conference, U.S. Dep't of State, Pub. No. 2349, at 160 (1945). The details were provided in a Convention on Privileges and

Meanwhile, also in the mid-1940s, agreements constituting what would become UN specialized agencies were being negotiated. Their clauses on privileges and immunities generally took a functional approach, with variations in the particular formulas used, in the expectation that more precise terms would be formulated in a Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations ("Special Convention"), which would take shape shortly after the completion of the General Convention.[14]

It was expected that the United States would soon join most or all of these organizations, and indeed the United States was already in the process of doing so. As a constitutional matter, the necessary domestic approvals were obtained either from the Senate under the treaty process specified in Article II of the Constitution (as was done for the UN Charter), or

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Immunities of the United Nations ("General Convention"), which would be developed and completed in early 1946. Convention on the Privileges and Immunities of the United Nations, done at New York, Feb. 13, 1946, entered into force Sept. 17, 1946, entered into force for the United States Apr. 29, 1970, 21 U.S.T. 1418, 1422, T.I.A.S. No. 6900, 1 U.N.T.S. 15, 16, 18, Section 2: "The United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case it has expresly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution."

[14] Convention on the Privileges and Immunities of the Specialized Agencies, approved by the General Assembly of the United Nations, done at New York, Nov. 21, 1947, entered into force Dec. 2, 1948, 33 U.N.T.S. 261. The United States has not ratified the Special Convention.

through joint resolutions or statutes (as was done for the Bretton Woods institutions, the UN headquarters agreement, and various other agreements).[15] Under either mode of approval, Congress was apprised of U.S. obligations to accord privileges and immunities, and members of Congress carefully scrutinized the nature of the commitments being made, to ensure that privileges and immunities no higher or lower than those required by the particular organization were conferred.

A review of the negotiating history of the key agreements, and of the legislative history of the IOIA and other measures considered by Congress in the years just before and after its enactment, belies the notion that Congress's reference to the "same immunity . . . as is enjoyed by foreign governments" meant that IOs could enjoy different immunity than required by international agreements approved by the Senate or Congress, or different immunity than foreign governments would enjoy, as U.S. policy regarding the immunity of foreign governments shifted. *See infra* Part I.C.

Significant evidence comes from the report of the chairman of the U.S. delegation to the San Francisco Conference, discussing Articles 104-105 of the UN Charter: "The Committee which discussed this matter was anxious to avoid any implication that the United Nations will be in any sense 'a super-State'."[16] Further

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[15] *See* Appendix B for details on selected agreements.

[16] Report to the President on the Results of the San Francisco Conference, U.S. Dep't of State, Pub. No. 2349 (1945). Cf. *Reparation for Injuries Suffered in the Service of the United Nations*, 1949 I.C.J. at 179 (concluding that the United Nations is

evidence comes from the discussions within the UN Preparatory Commission, occurring almost simultaneously with the congressional consideration of the IOIA, which recognized and reinforced the principle that the extent of IO immunities would be determined and limited by their functions.[17] Within this context, the IOIA's legislative history reflects a congressional assumption that to the extent that IOs might become involved in commercial activity, they should not be entitled to immunity.[18]

Senator Arthur Vandenberg's statement as a member of the U.S. delegation to the UN General Assembly meeting in February 1946 offers further evidence of contemporaneous sensitivity in Congress to potentially excessive claims of IO immunity. In his statement, the Senator reserved the U.S. position on certain aspects of the General Convention and explained that the United States would abstain in the vote on the

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an international person, while observing: "That is not the same thing as saying that it is a State, which it certainly is not, or that its legal personality and rights and duties are the same as those of a State. Still less is it the same thing as saying that it is a 'super-State,' whatever that expression may mean.").

[17] *See* Report of the Preparatory Commission of the United Nations, UN Doc. PC/20 61-62 (Dec. 23, 1945) ("[I]t must be recognized that not all specialized agencies require all the privileges and immunities which may be needed by others. ... It should be a principle that no immunities and privileges, which are not really necessary, should be asked for."). For confirmation that the specialized agencies should enjoy *only* such privileges and immunities as are necessary for their functions, *see* UN G.A. Res. 22(I)(D) (Feb. 13, 1946).

[18] S. Rep. No. 79-861, at 2 (engaging in commercial activity would constitute grounds for revoking immunity).

Special Convention.[19] When the General Convention was transmitted to both Houses of Congress the following year, the Secretary of State's report noted that the IOIA and the General Convention were overlapping but not identical; the administration asked that "extensive amendment of [the IOIA] be deferred until such time as the need for privileges and immunities on the part of international organizations throughout the world shall have become clarified."[20]

Whether the newly emerging IOs would, in fact, be entering the marketplace as commercial actors was a major uncertainty of the mid-1940s. Given the international negotiations of which Congress was aware, which were in the process of clarifying the levels of immunity that specific IOs would require, it is highly doubtful that Congress meant to enshrine in the IOIA an immunity for commercially active IOs that was already suspect for foreign governments and government-owned entities. *See infra* Part I.C.

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[19] Statement of Senator Vandenberg, Feb. 1946, quoted in Letter from Secretary of State to Speaker of the House and President Pro Tempore of the Senate Transmitting the Convention on Privileges and Immunities of the United Nations 33-34 (May 12, 1947), *in Foreign Relations of the United States, 1947, The United Nations*, Vol. 1, at https://history.state.gov/historicaldocuments/frus1947v01/d19 ("Letter of Transmittal"). Senator Vandenberg's intervention noted that Congress might have to go beyond the IOIA in respect of certain privileges and immunities of IO-affiliated personnel.

[20] Letter of Transmittal at 36. Congressional approval of the General Convention in fact was deferred until 1970.

C. U.S. Policy Favoring a Restrictive Approach to Foreign Sovereign Immunity Crystallized Quickly Between 1945 and 1952 and Became Applicable to IOs Whose Immunities Are Not Otherwise Governed by International Agreement.

As this Court has recognized in its foreign sovereign immunity cases, U.S. practice on immunity was undergoing transformation in the mid-twentieth century, with the pivot of those changes coinciding closely with enactment of the IOIA. The contours of a general shift away from absolute immunity for foreign sovereigns toward a restrictive approach were already evident when Congress needed to legislate some form of IO immunity in 1945. In light of growing awareness as of 1945 that foreign governmental immunity could well soon crystallize around a restrictive rather than absolute approach, there is no basis for construing the IOIA to freeze a particular level of immunity for IOs in perpetuity.

Already by the early decades of the twentieth century, the Executive Branch began to advocate for removing sovereign immunity for some forms of private activity carried out by foreign states. *See The Pesaro*, 277 F. 473, 479-80 & n.3 (S.D.N.Y. 1921) (noting State Department's position that merchant vessel owned by foreign state should not be immune from suit). Although this Court did not accept that view at the time, *see Berizzi Bros. Co. v. The Pesaro*, 271 U.S. 562 (1926), by mid-century the Executive and Judicial Branches would converge in curtailing immunity for foreign governments' commercial acts. In the years leading up

to the IOIA's enactment, this Court shifted its approach from independent evaluation of immunity claims (as in *Berizzi*) to deference to the Executive Branch's stance, with particular care taken not to accord different immunity than the Executive thought warranted. *See Ex parte Peru*, 318 U.S. 578 (1943); *The Navemar*, 303 U.S. 68, 71 (1938). In *Republic of Mexico v. Hoffman*, 324 U.S. 30, 35 (1945), this Court followed the Executive's rejection of immunity, making clear that it is "not for the courts to deny an immunity which our government has seen fit to allow, or to allow an immunity on new grounds which the government has not seen fit to recognize." By 1952, in a document known as the Tate Letter,[21] the State Department announced a definitive shift to the restrictive theory as a matter of Executive policy, thereby inaugurating a quarter-century of practice in which the courts followed *Hoffman* in giving conclusive effect to Executive determinations of non-immunity in cases involving the commercial activities of foreign states.

The Tate Letter did not spring fully formed from the pen of the Acting Legal Adviser on May 19, 1952. Rather, as its first sentence acknowledged, the State Department "has *for some time* had under consideration the question whether the practice of the Government in granting immunity ... should not be changed."[22] The Tate Letter surveyed trends in judicial decisions and international agreement practice that had been

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[21] Letter from Jack B. Tate, Acting Legal Adviser, U.S. Dep't of State to Philip B. Perlman, Acting Attorney General (May 19, 1952), *reprinted in*, 26 Dep't State Bull. 984 (1952).

[22] *Id.* (emphasis added).

gathering support among many countries since the 1920s and addressed the policy reasons favoring a U.S. shift to a restrictive approach, including the growing involvement of foreign states in commercial activities.

The trends motivating the 1952 announcement of a definitive change in U.S. policy on foreign sovereign immunity were already evident in 1945, as *Mexico v. Hoffman* indicates.[23] In the context of a decades-long shift away from absolute to restrictive immunity for foreign states, it is implausible that Congress in 1945 assumed a static conception of foreign governments' immunity when extending such immunity to IOs whose immunities would not otherwise be specified by international agreement.

D. Neither the IOIA nor Any Subsequent Development in Immunities Law Contemplates That IOs Would Enjoy Different Immunities Than Required by International Agreement or Than States Enjoy at the Time of Suit.

As enacted in 1945, the IOIA provided a default rule for determining IO immunity, by assimilating the rules for IOs and foreign governments with respect to their immunity from suit and judicial process. As noted above, a default rule was needed, and needed quickly, in order to allow the United States to begin joining IOs and hosting them on U.S. territory, without the delays that

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[23] On growing support for restrictive immunity from the early twentieth century through the Tate Letter, *see* William W. Bishop, Jr., Editorial Comments, *New United States Policy Limiting Sovereign Immunity*, 47 Am. J. Int'l L. 93 (1953).

would necessarily accompany any attempt to formulate a detailed code of immunity rules in the absence of preexisting models or precedents. Within a few years, numerous specific agreements supplanted the default rule for the IOs to which they pertained. Also within a few years—seven at most—absolute foreign sovereign immunity could no longer have been the applicable default rule, because that rule had been superseded by the new U.S. policy announced in the Tate Letter. Although no occasion arose for testing the applicability of Tate Letter principles to IOs between 1952 and 1976, the restrictive principle embraced in 1952 for foreign sovereign immunity would have been the "same immunity" for any IO not covered by an international agreement in this period.

The enactment of the 1976 FSIA provided a new and more comprehensive set of default rules—immunity for foreign sovereigns under a restrictive theory, with enumerated exceptions for categories of suits for which Congress has determined such sovereigns should not enjoy immunity. As Part II explains, it is the 1976 criteria, and not an outmoded theory of absolute immunity, that should govern IO immunity.

II. APPLICATION TO IOS OF THE RESTRICTIVE PRINCIPLES EMBODIED IN THE FSIA PRODUCES A COHERENT, WORKABLE APPROACH THAT COMPLIES WITH U.S. INTERNATIONAL OBLIGATIONS.

Application to IOs of the restrictive principles embodied in the 1976 FSIA is consistent with the text of

the IOIA and produces a coherent, workable approach to IO immunity that accounts for the growing participation of IOs in commercial activities.[24] Moreover, the default principles codified in the FSIA are far more appropriate than a supposed rule of absolute immunity that was already on its way out in 1945.

By contrast, adherence in 2018 and beyond to an absolute theory of immunity for IOs that was obsolescing in 1945—and that had been abandoned for foreign states by Executive policy in 1952 and by Congress in 1976—would be outdated and dysfunctional. This approach would insulate IOs engaging in commercial activity in the United States or whose commercial activities have direct effects in the United States from liability in U.S. courts. And it would allow foreign states to circumvent the FSIA by conducting their commercial activities through an international organization, to avoid liability for their otherwise non-immune commercial activity. *Accord OSS Nokalva, Inc. v. European Space Agency*, 617 F.3d 756, 764 (3d Cir. 2010).[25]

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[24] Cf. Giorgio Gaja, *Jurisdictional Immunity of International Organizations, in Report of the International Law Commission on the Work of its 58th Session*, 2006 Y.B. Int'l L. Comm'n, Vol. II, Part 2, Annex II, 201, 202, U.N. Doc. A/61/10 (increased importance of economic activities of IOs, often in direct competition with the private sector).

[25] Absolute immunity for IOs could also provide a vehicle for states to avoid their human rights obligations by channeling certain activities through IOs—a prospect that has been called "not fanciful." *See* Michael J. Singer, *Jurisdictional Immunity of International Organizations: Human Rights and Functional Necessity Concerns*, 36 Va. J. Int'l L. 53, 58, 64 n.38 (1995).

As this Court's decisions explain, the FSIA now provides a "comprehensive set of legal standards governing claims of immunity," *Republic of Argentina v. NML Capital Ltd.*, 134 S. Ct. 2250, 2255 (2014), which are consistent with international law and with all obligations under existing international agreements. *See also Bolivarian Republic of Venezuela v. Helmerich & Payne Int'l Drilling Co.*, 137 S. Ct. 1312, 1320 (2017) (explaining that the FSIA was intended to conform to relevant international law). The basic structure of the FSIA establishes a default rule of immunity (§ 1604), *Rubin v. Islamic Republic of Iran*, 138 S. Ct. 816, 822 (2018), subject to specified exceptions, e.g. for waiver (§ 1605(a)(1)), commercial activity (§ 1605(a)(2)), immovable property located in the forum (§ 1605(a)(4)), and torts committed in the forum's territory (§ 1605(a)(5)).

The FSIA also confers upon the courts, rather than the Executive Branch, the responsibility for deciding claims of immunity. This approach, too, is the proper one to apply to IOs today and far preferable to either a blanket rule of absolute immunity for IOs or case-by-case executive determinations. Although the IOIA contains authority for the Executive Branch to adjust IO immunity on a case-by-case basis, [26] the same considerations that motivated Congress to prescribe criteria of general applicability for foreign sovereigns and transfer to the courts the responsibility to determine their application in particular cases are no less pertinent in actions against IOs. Not surprisingly,

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[26] 22 U.S.C. § 288.

just as the Executive Branch welcomed enactment of the FSIA, it has fully endorsed the application of the FSIA's substantive criteria to IOs by the courts.

A. The Consistent U.S. Position from the Earliest Post-1976 Cases Onward Has Been That the Restrictive Principles of the 1976 FSIA Apply to IOs.

Very soon after the entry into force of the FSIA in 1977—indeed within that calendar year—the legal question of the impact of the FSIA on IO immunity was already reaching U.S. courts, beginning with a suit brought in November 1977 against the Organization of American States.[27] By October 1978, the Executive Branch had formulated its position on the question of the interaction between the FSIA and the IOIA and conveyed it to the Court of Appeals for the D.C. Circuit in the following terms:

> [T]here can be, we submit, no question that since the passage two years ago of the [Foreign Sovereign] Immunities Act international organizations are now fully subject to suit in American courts for their acts *jure gestionis*. The suggestion advanced below by the *amici* that the International Organizations Immunities Act somehow ossified in 1945 the doctrine of absolute foreign sovereign immunity with respect to international organizations is devoid of substance. ...

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[27] *Broadbent v. Org. of Am. States*, 628 F.2d 27 (D.C. Cir. 1980) (filed in district court in November 1977).

> The opinion expressed in the district court's order of January 25, 1978, that the "express language and the statutory purposes underlying the International Organizations Immunities Act of 1945 bring international organizations within the terms of the Foreign Sovereign Immunities Act of 1976" was manifestly correct as regards the issue of immunity. The district court's about face ... is without support in law. Such judicial attitude would take this country back to an era when sovereign or international obligors could not be held to their commercial undertakings or their private law obligations. But it is now "beyond cavil that part of the foreign relations law recognized by the United States is that the commercial obligations of a foreign government may be adjudicated in those courts otherwise having jurisdiction to enter such judgments"; we know of no reason why the same rules of legal responsibility should not apply to an international organization, even absent a specific treaty stipulation.[28]

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[28] Brief for the United States as Amicus Curiae 8-10, *Broadbent v. Org. of Am. States*, 628 F.2d 27 (D.C. Cir. 1980) (No. 78-1465) (dated and filed in the D.C. Circuit as of October 1978) (citations, alteration, and footnote omitted). A footnote refers to the immunity article of the OAS Charter (quoted in the Appendix hereto) and concludes: "Nothing in the Charter immunizes the O.A.S. from suit on its commercial obligations." *Id.* at 10 n.1; *see also id.* at 6 (IOIA establishes "in language admitting of no ambiguity" that IOs enjoy the "same" immunity as foreign governments, thereby mandating resort to the FSIA as the relevant body of law defining those

The Executive Branch reaffirmed this clear legal position consistently from the earliest days of the FSIA era onward. On June 24, 1980, the Legal Adviser of the Department of State wrote to the General Counsel of the Equal Employment Opportunity Commission:

> By virtue of the FSIA, and unless otherwise specified in their constitutive agreements, international organizations are now subject to the jurisdiction of our courts in respect of their commercial activities, while retaining immunity for their acts of a public character.[29]

The same position has been reiterated in subsequent judicial filings,[30] as well as in communications with

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immunities). The D.C. Circuit did not need to decide on the applicability of the FSIA criteria because it found that under either an absolute or a restrictive theory, defendant would have been immune on a claim involving an employment dispute. To similar effect, *see Tuck v. Pan American Health Organization*, 668 F.2d 547 (D.C. Cir. 1981); *Mendaro v. World Bank*, 717 F.2d 610 (D.C. Cir. 1983).

[29] Letter from Roberts B. Owen, Legal Adviser of the Department of State, to Leroy D. Clark, General Counsel of the Equal Employment Opportunity Commission (June 24, 1980), excerpted in Marian L. Nash, *Contemporary Practice of the United States Relating to International Law*, 74 Am. J. Int'l L. 917, 918 (1980).

[30] *See* Br. of United States as *Amicus Curiae* at 14, *Corrinet v. United Nations*, No. 96-17130 (9th Cir. Mar. 12, 1997), 1997 WL 33702375 ("Since Section 2 of the [IOIA] grants international organizations the same immunities as 'foreign governments,' the FSIA in effect defines the immunities that international organizations as institutions enjoy under the IOIA." (footnote omitted)). IOIA immunities and FSIA immunities were treated as analogous in another case in which the Government intervened to

Congress.[31] It was likewise treated as the presumptively correct statement of the relationship between the IOIA and the FSIA when the law on this point was authoritatively restated in the *Restatement (Third) of the Foreign Relations Law of the United States*.[32] As

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defend the constitutionality of the IOIA in a suit by an employee contesting her dismissal. *See* Br. for the United States as Intervenor at 3, *Veiga v. World Meteorological Org.*, No. 08-3999cv (2d Cir. May 1, 2009), 2009 WL 8186687 (stating that IOIA "is a natural application of the immunity of the foreign states that comprise such international organizations").

[31] *See* Letter of Submittal, Headquarters Agreement with Organization of American States, S. Treaty Doc. No. 102-40 (Sept. 21, 1992), requesting Senate to give advice and consent under Article II of the Constitution to an agreement that would afford the OAS "full immunity from judicial process thus going beyond the *usual United States practice of affording restrictive immunity*. In exchange, however, the Agreement requires that the OAS 'make provision for appropriate modes of settlement of those disputes for which jurisdiction would exist against a foreign government under the Foreign Sovereign Immunities Act'." S. Treaty Doc. No. 102-40 (1992), *reprinted in Digest of United States Practice in International Law 1991-1999*, at 1015, 1016-17 (Sally J. Cummins & David P. Stewart, eds., 2005) (emphasis added).

[32] *Restatement (Third) of the Foreign Relations Law of the United States*, § 467 reporters' note 4 (1987) ("it would appear that the Foreign Sovereign Immunities Act has the effect of applying the restrictive theory also to international organizations generally"). The *Restatement* likewise follows the U.S. government's position in finding that international agreement-based immunities prevail over statutory default rules; that the United Nations, U.N. specialized agencies, and the Organization of American States enjoy agreement-based immunities; and that even under a restrictive theory of immunity, employment disputes with international organizations are not "commercial" and thus remain immune. *Id.* § 467, cmt. d and reporters' note 4. The *Restatement (Fourth) of the*

Judge Pillard properly stated in her concurrence in the opinion below, the "considered view" of the Executive Branch throughout the FSIA era has been in favor of applying the restrictive theory of immunity to international organizations.[33]

Amici submit that this considered view is also correct. As demonstrated below, applying the FSIA's restrictive approach to the immunities of IOs is consistent with the IOIA itself and provides the best set of default rules for IOs, in the absence of conflicting or more specific rules in agreements to which the United States is party, which would necessarily prevail.

The Executive Branch's considered view has also been consistent. As detailed above, the Government has long maintained that the FSIA's criteria apply to IOs under the IOIA. This Court has paid "special attention" to the Government's views on construction of statutes in the foreign relations domain, such as the FSIA, which, like the IOIA, was drafted in the Executive Branch and finalized in close consultation with the Department of State. Cf. *Helmerich & Payne*, 137 S. Ct. at 1320-21. The greater the consistency of the Government's positions, the greater should be the Court's deference; little deference need be accorded if it should happen that the Government suddenly shifts position here.[34] (*Amici*

Foreign Relations Law of the United States, to be published later this year, does not address IO immunities.

[33] *Jam v. Int'l Fin. Corp.*, 860 F.3d 703, 710 (D.C. Cir. 2017) (Pillard, J., concurring).

[34] *See, e.g., N. Haven Bd. of Educ. v. Bell*, 456 U.S. 512, 522 n.12, 538 n.29 (1982) (holding that, although "th[e] Court normally accords

have no information, at the time of this brief's submission, as to whether the U.S. Government will submit a brief to this Court in the present case, or if so, what its position will be.)

B. The IOIA/FSIA Combination Ensures Fulfillment of All U.S. Obligations Under International Agreements for Immunities of IOs.

The application of the immunity principles codified in the FSIA to IOs would preserve and prioritize those U.S. obligations under international agreements that grant higher (or lower) levels of immunity than specified in the FSIA to certain IOs. Section 1604 of the FSIA makes clear that the FSIA principles are "[s]ubject to existing international agreements to which the United States is a party at the time of enactment of this Act." 28 U.S.C. § 1604. Selected "existing international agreements," focusing on the 1945-1955 period, are listed and their immunities clauses quoted in Appendix B. To the extent there might be any conflict between these agreements and the FSIA, these agreements prevail over the FSIA's default rules.[35]

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great deference to" the United States' interpretation of a statute, deference is not appropriate when "there is no consistent administrative interpretation").

[35] An international agreement with domestic effect entered into after 1976 would also prevail over the FSIA's default rules under the later-in-time rule. *See, e.g., Whitney v. Robertson*, 124 U.S. 190, 195 (1888).

Some of these agreements, like the Convention on the Privileges and Immunities of the United Nations,[36] call for dismissal of any suit or legal process brought against the organization in the courts of any party. Other agreements generally provide only functional immunity by granting the IO "such legal capacity, privileges, and immunities as are necessary for the exercise of its functions and the accomplishment of its purposes,"[37] in which case the courts must interpret the treaty to determine which immunities are "necessary for the exercise of its functions" and then confer the appropriate level of functional—but not absolute—immunity. Still other agreements, especially those applicable to IOs whose principal functions are commercial in character, provide *sui generis* rules for the immunities of the particular IO, in light of what is deemed "necessary" for the fulfillment of their respective functions.

Because the FSIA fully preserves "existing international agreements," agreements requiring the United States to provide a given level of immunity to a particular IO would be completely honored. Application of FSIA principles to IOs would thus preserve the precise balance carefully negotiated among the parties to each international agreement—and the scope of immunity accorded IOs under these agreements would

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[36] 21 U.S.T. 1418, T.I.A.S. No. 6900, 1 U.N.T.S. 15.

[37] Charter of the Organization of American States, 2 U.S.T. 2394, T.I.A.S. No. 2361, 119 U.N.T.S. 3.

be neither higher nor lower than the agreement requires.[38]

C. Except as Specifically Required by U.S. International Agreements, IOs Are Not Entitled to Different Immunities Than Foreign States.

Unless an international agreement or IO-specific statute requires a different level of immunity, IOs should be governed by the "same immunity" rules that have applied since 1976 to foreign governments. Failure to do so would produce numerous anomalies.

Obvious anomalies would arise in the commercial sphere. Certain IOs, particularly international financial institutions, regularly engage in commercial transactions with private parties and with foreign states whose corresponding activities have not been entitled to immunity under U.S. practice since at least 1952 and are non-immune under the legal principles codified in the 1976 FSIA. There is no logic to an asymmetry in which IOs could completely avoid suit in U.S. courts for claims arising from their commercial activities, while the parties with which the IOs deal have no such immunity. This is especially true where the IO in question manifestly strives to make a profit on its commercial activities.

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[38] As explained above, the Executive Branch's position confirms that "supervening treaty provisions" would take priority over the default rules of the IOIA or the FSIA. *See* Letter from Roberts B. Owen, *supra* n.29; *see also* Br. for the United States as Amicus Curiae in *Corrinet*, *supra* n.30.

Property rights provide a further illustration. Surely if a foreign state is non-immune in an action involving "rights in immovable property situated in the United States,"[39] it would be highly anomalous for an IO to be absolutely immune from suit involving comparable rights—perhaps even in the same property.[40]

Another set of anomalies would arise in relation to the treatment of individuals who serve as foreign governments' representatives in or to IOs and the officers and employees of IOs and their immediate families. By virtue of other provisions of the IOIA, both of these groups of individuals are entitled to the "same privileges, exemptions, and immunities as are accorded under similar circumstances to officers and employees, respectively, of foreign governments, and members of their families." [41] However, those privileges and immunities have unquestionably changed since 1945. After the Vienna Conventions on Diplomatic and Consular Relations took effect for the United States, Congress enacted the Diplomatic Relations Act of 1978,

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[39] FSIA, § 1605(a)(4).

[40] Cf. *Permanent Mission of India to United Nations v. City of New York*, 551 U.S. 193 (2007) (involving tax liens imposed for nonpayment of taxes assessed on portions of property used for commercial activities). IOs, no less than government missions, might potentially own property used partly for commercial activity. In the absence of an agreement with the IO to confer more immunity than foreign states enjoy in similar circumstances, the court should apply the "same immunity" to both.

[41] 22 U.S.C. § 288d(a); *see also id.* § 288a(d) (specifying that, as to customs duties, taxes, and treatment of official communications, the privileges, exemptions, and immunities of IOs "shall be those accorded under similar circumstances to foreign governments").

28 U.S.C. § 1351 *et seq.* ("DRA"). The DRA provides that the then-new Vienna Convention standards are now the applicable rules on immunity for foreign governments' diplomatic and consular agents, thereby replacing prior law going back to 1799. *See* 92 Stat. 808, 808, Pub. L. No. 95-393 (1978) ("Establishment of the Vienna Convention as the United States law on diplomatic privileges and immunities."). The DRA harmonizes the treatment of IO personnel and representatives to IOs with the then-recently-codified Vienna Convention standards, thereby replacing the blanket immunity of the pre-1945 era with the more finely-tuned modern rules.

This change contradicts the view that IO immunities were frozen in 1945 and oblivious to any subsequent changes in foreign governmental immunities. Otherwise, Congress would not have extended the DRA to IO-related personnel, and the immunities of IO-related personnel would have resisted the modernizations in diplomatic and consular law that adjusted the privileges and immunities of foreign governmental personnel.

D. Application of the FSIA's Restrictive Principles to IOs Would Lift Immunity Only Where There is Sufficient U.S. Nexus to Justify Federal Jurisdiction.

Judicial application of the FSIA's criteria in suits against IOs would not open the floodgates to litigation lacking a genuine connection to the United States. The waiver exception (§ 1605(a)(1)) would only be applicable if the IO had agreed, "either explicitly or by implication," to submit itself to the jurisdiction of U.S. courts for the

claims in question.[42] The commercial activities exception (§ 1605(a)(2)) would only be applicable by its terms to a commercial activity carried on in the United States or having a direct effect in the United States.[43] The property exception (§ 1605(a)(4)) would only apply to litigation over "rights in immovable property situated in the United States."[44] And the noncommercial tort exception (§ 1605(a)(5)) would only apply to torts "occurring within the territorial jurisdiction of the United States."[45]

Amici express no view on whether any of these exceptions would reach the conduct pleaded in the present action. Since the court below dismissed the case on the basis of an incorrect holding that IOs enjoy absolute immunity and that the FSIA criteria are not applicable to actions against IOs, there has not yet been any judicial examination of the potential applicability of one or more of the FSIA's exceptions. With this Court having granted certiorari to determine whether the "same immunity" under the IOIA is the same as under

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[42] Cf. *Republic of Argentina v. NML Capital, Ltd.*, 134 S. Ct. 2250 (2014). Section 1604 would apply to waivers of immunity in existing international agreements. *See supra* Part II.B.

[43] Cf. *OBB Personenverkehr AG v. Sachs*, 136 S. Ct. 390 (2015).

[44] Cf. *Permanent Mission of India to United Nations*, 551 U.S. at 196-97.

[45] Cf. *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 441 (1989). Other exceptions to immunity, such as the expropriation exception (§ 1605(a)(3)), the state-sponsored terrorism exception (§ 1605A), and the exception for acts of terrorism in the United States (§ 1605B) appear highly unlikely to apply to IOs.

the FSIA, it should decide that question in the affirmative and remand with instructions to the courts below to decide which if any of the FSIA's exceptions might render the Respondent non-immune in the present case. That decision would be made "[a]t the threshold of the action" and should not require protracted factual development.[46]

CONCLUSION

For all these reasons, this Court should reverse the ruling of the D.C. Circuit below and remand for assessment of Respondent's plea of immunity in light of the FSIA's comprehensive criteria.

Respectfully submitted,

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[46] *Helmerich & Payne*, 137 S. Ct. at 1324 (internal quotation marks omitted) (bracket in original); *see also id.* at 1317 (holding that factual disputes about entitlement to immunity, if any, should be resolved "as near to the outset of the case as is reasonably possible").

APPENDIX

Appendix A
LIST OF *AMICI CURIAE*[*]

José E. Alvarez is the Herbert and Rose Rubin Professor of International Law at NYU School of Law, a former President of the American Society of International Law, and a former co-Editor in Chief of the American Journal of International Law.

George A. Bermann is the Jean Monnet Professor of EU Law & Walter Gellhorn Professor of Law at Columbia Law School, the Director of the Center for International Commercial and Investment Arbitration, and the Chief Reporter of the American Law Institute's *Restatement of the U.S. Law of International Commercial and Investment Arbitration*.

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Sarah H. Cleveland is the Louis Henkin Professor of Human and Constitutional Rights at Columbia Law School, a co-coordinating reporter of the American Law Institute's *Restatement (Fourth) of the Foreign Relations Law of the United States*, and a member of the UN Human Rights Committee. From 2009 to 2011, she served as Counselor on International Law to the Legal Adviser at the U.S. Department of State.

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International Law, and a former co-Editor in Chief of the American Journal of International Law. From 1977 to 1981, she served as an attorney in the U.S. Department of State, including as special assistant to Legal Adviser Roberts B. Owen.

William S. Dodge is Martin Luther King, Jr. Professor of Law at the University of California, Davis, School of Law and a co-reporter of the American Law Institute's *Restatement (Fourth) of Foreign Relations Law of the United States*. From 2011 to 2012, he served as Counselor on International Law to the Legal Adviser at the U.S. Department of State.

Harold Hongju Koh is Sterling Professor of International Law at Yale Law School. From 2009 to 2013, he served as Legal Adviser of the U.S. Department of State; from 1998 to 2001, he served as Assistant Secretary of State for Democracy, Human Rights and Labor; and from 1983 to 1985, he served as Attorney-Adviser, Office of Legal Counsel, U.S. Department of Justice.

Ingrid Wuerth is the Helen Strong Curry Chair in International Law at Vanderbilt Law School, the Director of the International Legal Studies Program, and a co-reporter of the American Law Institute's *Restatement (Fourth) of Foreign Relations Law of the United States*.

Appendix B
List of U.S. Treaties and Agreements on Immunities of International Organizations, 1945-1955 (Chronological by Date of Signature)*

1. **Charter of the United Nations and Statute of the International Court of Justice, 59 Stat. 1031, 1053, T.S. 993**

Signed: San Francisco, June 26, 1945

Entered into force: October 24, 1945

Article 105(1): "The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfillment of its purposes."

2. **Constitution of the Food and Agriculture Organization of the United Nations, 12 U.S.T. 980, 996, T.I.A.S. No. 4803**

Signed: Quebec, October 16, 1945

Entered into force: October 16, 1945

Authorized by joint resolution of Congress approved July 31, 1945 (59 Stat. 529)

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* The discussion of different treaties and agreements in this appendix uses different terminology to reflect the different ways in which the treaties and agreements were concluded, brought into force, and implemented. Wherever possible we have followed the usage in the Treaties in Force compendium promulgated by the U.S. Department of State. *See* U.S. Department of State, Treaties in Force (2018); Status of Multilateral Treaties Deposited with the United Nations Secretary-General (treaties.un.org.); and websites of the indicated international organizations.

Article XVI: "Legal Status.

1. The Organization shall have the capacity of a legal person to perform any legal act appropriate to its purpose which is not beyond the powers granted to it by this Constitution.

2. Each Member Nation and Associate Member undertakes, insofar as it may be possible under its constitutional procedure, to accord to the Organization all the immunities and facilities which it accords to diplomatic missions, including inviolability of premises and archives, immunity from suit, and exemptions from taxation."

3. Constitution of the United Nations Educational, Scientific and Cultural Organization, 61 Stat. 2495, 2503, T.I.A.S. No. 1580, 4 U.N.T.S. 275, 292

Concluded: London, November 16, 1945

Entered into force: November 4, 1946 by virtue of joint resolution approved July 30, 1946 (Pub. L. No. 79-565, 22 U.S.C. § 287); reentered into force for the United States October 1, 2003; withdrawal notified October 12, 2017, to take effect December 31, 2018

Article XII: Legal status of the Organisation: "The provisions of Articles 104 and 105 of the Charter of the United Nations Organisation concerning the legal status of that Organisation, its privileges and immunities shall apply in the same way to this Organisation."

4. Articles of Agreement of the International Monetary Fund, 60 Stat. 1401, 1413, T.I.A.S. No. 1501, 2 U.N.T.S. 39, 74

Formulated: Bretton Woods Conference, July 1-22, 1944

Opened for signature: Washington, December 27, 1945

Entered into force: December 27, 1945 (authorized and implemented by Bretton Woods Agreements Act of 1945, enacted July 31, 1945, Pub. L. No. 171, ch. 339, 79th Cong., 1st Sess., 22 U.S.C. § 286 et seq.)

Article IX(3): "The Fund, its property and its assets, wherever located and by whomsoever held, shall enjoy immunity from every form of judicial process except to the extent that it expressly waives its immunity for the purpose of any proceeding or by the terms of any contract."

5. Articles of Agreement of the International Bank for Reconstruction and Development, 60 Stat. 1440, 1457-58, T.I.A.S. No. 1502, 2 U.N.T.S. 134, 180

Formulated: Bretton Woods Conference, July 1-22, 1944

Opened for signature: Washington, December 27, 1945

Entered into force: December 27, 1945 (authorized and implemented by Bretton Woods Agreements Act of 1945, enacted July 31, 1945, Pub. L. No. 79-171, ch. 339, 22 U.S.C. § 286 et seq.)

Article VII(3): "Actions may be brought against the Bank only in a court of competent jurisdiction in the territories of a member in which the Bank has an office, has appointed an agent for the purpose of accepting

service or notice of process, or has issued or guaranteed securities. No actions shall, however, be brought by members or persons acting for or deriving claims from members. The property and assets of the Bank shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Bank."

6. **Convention on the Privileges and Immunities of the United Nations, 21 U.S.T. 1418, 1422, T.I.A.S. No. 6900, 1 U.N.T.S. 15, 16, 18**

Done: New York, February 13, 1946

Entered into force: September 17, 1946 for other parties

Entered into force for the United States: April 29, 1970 (following Senate consent to Art. II treaty under U.S. Constitution March 19, 1970)

Article II(2): "The United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution."

7. **Constitution of the World Health Organization, 62 Stat. 2679, 2692, T.I.A.S. No. 1808, 14 U.N.T.S. 185, 201**

Signed: New York July 22, 1946

Entered into force: April 7, 1948 for other parties

Entered into force for the United States: June 21, 1948, by virtue of joint resolution approved June 14, 1948 (Pub. L. 643, 80th Congress, 22 U.S.C. § 290)

Article 67(a): "The Organization shall enjoy in the territory of each Member such privileges and immunities as may be necessary for the fulfilment of its objectives and for the exercise of its functions."

Article 68: "Such legal capacity, privileges and immunities shall be defined in a separate agreement to be prepared by the Organization in consultation with the Secretary-General of the United Nations and concluded between the Members."

8. **Instrument for the Amendment of the Constitution of the International Labor Organization, 62 Stat. 3485, 3552, 3554, T.I.A.S. No. 1868, 15 U.N.T.S. 35, 102, 104**

Dated: Montreal, October 9, 1946

Entered into force: April 20, 1948; reentered into force for the United States February 18, 1980, authorized pursuant to joint resolution approved June 30, 1948 (22 U.S.C. § 271)

Article 40: "Privileges and Immunities.

1. The International Labour Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes.

2. Delegates to the Conference, members of the Governing Body and the Director-General and officials of the Office shall likewise enjoy such privileges and

immunities as are necessary for the independent exercise of their functions in connection with the Organization.

3. Such privileges and immunities shall be defined in a separate agreement to be prepared by the Organization with a view to its acceptance by the [States] Members."

9. Constitution of the International Refugee Organization, 18 U.N.T.S. 3

Opened for signature: December 15, 1946

Signed by the United States: July 1, 1947, subject to provisions of Senate joint resolution July 1, 1947

Entered into force: August 20, 1948

Terminated: December 31, 1951

Article 13: "Status, Immunities and Privileges.

1. The Organization shall enjoy in the territory of each of its members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its objectives.

2(a). The Organization shall enjoy in the territory of each of its members such privileges and immunities as may be necessary for the exercise of its functions and the fulfilment of its objective.

2(b). Representatives of members, officials and administrative personnel of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization.

3. Such legal status, privileges and immunities shall be defined in an agreement to be prepared by the Organization after consultation with the Secretary-General of the United Nations. The agreement shall be open to accession by all members and shall continue in force as between the Organization and every member which accedes to the agreement."

10. **Agreement between the United Nations and the United States of America and the respecting the headquarters of the United Nations, 61 Stat. 3416, T.I.A.S. No. 1676, 11 U.N.T.S. 11**

Signed: Lake Success, June 26, 1947

Entered into force: November 21, 1947; authorized pursuant to Joint Resolution of Congress, 61 Stat. 756 (August 4, 1947)

11. **Convention of the World Meteorological Organization, with related protocol, 1 U.S.T. 281, 292, T.I.A.S. No. 2052, 77 U.N.T.S. 143, 162**

Done: Washington, October 11, 1947

Entered into force: March 23, 1950; ratified by the United States May 4, 1949

Article 27(b)(i): "The Organization shall enjoy in the territory of each Member to which the present Convention applies such privileges and immunities as may be necessary for the fulfilment of its purposes and for the exercise of its functions."

12. Convention on the Intergovernmental Maritime Consultative Organization, 9 U.S.T. 621, 634, 645, T.I.A.S. No. 4044, 289 U.N.T.S. 48, 70, 72, 104

Signed: Geneva, March 6, 1948; accepted by the United States August 17, 1950

Entered into force: March 17, 1958

Article 50: "The legal capacity, privileges and immunities to be accorded to, or in connection with, the Organization, shall be derived from and governed by the General Convention on the Privileges and Immunities of the Specialized Agencies approved by the General Assembly of the United Nations on the 21st November, 1947, subject to such modifications as may be set forth in the final (or revised) text of the Annex approved by the Organization in accordance with Sections 36 and 38 of the said General Convention."

Article 51: "Pending its accession to the said General Convention in respect of the Organization, each Member undertakes to apply the provisions of Appendix II to the present Convention."

Appendix II, Section 2(a): "The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes and the exercise of its functions."

13. Charter of the Organization of American States, 2 U.S.T. 2394, 2435, T.I.A.S. No. 2361, 119 U.N.T.S. 3, 88

Signed: Bogotá, Colombia, April 30, 1948

Entered into force: December 13, 1951

Article 103: "The Organization of American States shall enjoy in the territory of each Member such legal capacity, privileges[,] and immunities as are necessary for the exercise of its functions and the accomplishment of its purposes."

14. **Agreement on the Status of the North Atlantic Treaty Organization, National Representatives, and International Staff, 5 U.S.T. 1087, 1092, T.I.A.S. No. 2992, 200 U.N.T.S. 3, 6**

Done: Ottawa, September 20, 1951

Entered into force: May 18, 1954

Article 5: "The Organization, its property and assets, wheresoever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case the Chairman of the Council Deputies, acting on behalf of the Organization, may expressly authorize the waiver of this immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution or detention of property."

15. **International Finance Corporation, Articles of Agreement, 7 U.S.T. 2197, 2214, T.I.A.S. No. 3620, 264 U.N.T.S. 118, 142**

Done: Washington, May 25, 1955; authorized and implemented by International Finance Corporation Act of 1955, Pub. L. No. 350, Ch. 788, 84th Cong., 1st Sess. (1955)

Entered into force: July 20, 1956

Article VI(3): "Actions may be brought against the Corporation only in a court of competent jurisdiction in the territories of a member in which the Corporation has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities. No actions shall, however, be brought by members or persons acting for or deriving claims from members."